

ORDINANCE NO. _____

1 AN ORDINANCE amending Chapter 8.48 of the Lincoln Municipal Code, Lincoln
2 Smokefree Air Act by amending Section 8.48.020 to clarify the purpose statement; adding a new
3 Section numbered 8.48.135 to add a definition for Smoking Breakrooms; adding a new section
4 numbered 8.48.162 to require a permit in order to allow smoking; amending Section 8.48.170 to
5 provide for where a permit may be issued and to delete affidavit requirement; amending Section
6 8.48.180 to clarify signage requirements; adding a new section numbered 8.48.182 to provide
7 permit information requirements; adding a new section numbered 8.48.184 to provide inspection
8 procedures; adding a new section numbered 8.48.186 to provide for suspension, revocation of a
9 permit; adding a new section numbered 8.48.188 to provide for a hearing; amending Section
10 8.48.190 to clarify enforcement procedures; repealing Sections 8.48.020, 8.48.170, 8.48.180, and
11 8.48.190 of the Lincoln Municipal Code as hitherto existing; and providing that this ordinance
12 shall become effective July 1, 2004.

13 BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

14 Section 1. That Section 8.48.020 of the Lincoln Municipal Code be amended to read
15 as follows:

16 **8.48.020 Purpose.**

17 The City Council does hereby find and declare that the purpose of this Chapter is to
18 protect the health and welfare of employees and the public by requiring nonsmoking and
19 smoking areas to be separated in ~~at~~ many places of employment and public places.

1 It is therefore declared to be the public policy of this City to encourage places of
2 employment and public places to eliminate and prevent the health and safety risks posed by
3 smoking at places of employment and public places. The City Council authorizes the Health
4 Director of the Lincoln-Lancaster County Health Department and law enforcement to administer
5 and enforce this Chapter within the City of Lincoln.

6 Section 2. That Chapter 8.48 of the Lincoln Municipal Code be amended by adding
7 a new section numbered 8.48.135 to read as follows:

8 **8.48.135 Definition; Smoking Breakroom.**

9 Smoking breakroom shall mean a room designated by a proprietor pursuant to Section
10 8.48.170 within a place of employment or public place where only employees of the proprietor
11 may be allowed to smoke.

12 Section 3. That Chapter 8.48 of the Lincoln Municipal Code be amended by adding
13 a new section numbered 8.48.162 to read as follows:

14 **8.48.162 Proprietor to Prohibit Smoking: Exception Allowed by Permit.**

15 It shall be unlawful to smoke in any public place or place of employment except where
16 allowed by this Chapter.

17 It shall be unlawful for any proprietor of any place of employment or public place to
18 allow smoking unless the proprietor has obtained a permit pursuant to this Chapter. A permit
19 may be issued by the Health Director as provided in Section 8.48.170.

20 Section 4. That Section 8.48.170 of the Lincoln Municipal Code be amended to read
21 as follows:

1 **8.48.170 ~~Proprietor to Prohibit Smoking; Exceptions.~~ Permit: Smoking Allowed.**

2 (a) ~~It shall be unlawful for a proprietor of any place regulated by this Chapter to allow~~
3 ~~smoking in any place~~ The Proprietor shall obtain a permit to allow smoking in any of the
4 following places of employment or public place, ~~except as follows:~~

5 (1) In guestrooms or suites ~~may be~~ designated as an indoor area where smoking is
6 allowed, however, the number of rooms or suites designated for smoking must be reasonably
7 proportionate to the preference of the users.

8 (2) At times when a scientific or analytical laboratory, governed by state or federal
9 law, or a laboratory at a college or university approved by the Nebraska Coordinating
10 Commission for Post Secondary Education, is conducting research into the health effects of
11 smoking, smoking may be allowed as part of the study.

12 (3) In an employee breakroom that has been designated as an indoor area where
13 smoking is allowed (“smoking breakroom”) by employees, provided that the following
14 requirements are met:

15 (i) Only employees of the proprietor shall be allowed to smoke within the
16 smoking breakroom; and

17 (ii) An employee breakroom designated for nonsmoking (“nonsmoking
18 breakroom”) shall be provided. It shall have at least the same size and amenities as the smoking
19 breakroom; and

20 (iii) The smoking breakroom shall not serve as a work area for any employee
21 and no employee shall be required to enter the smoking breakroom in order to reach the
22 employee’s work area. This prohibition shall not apply to employees providing janitorial and
23 maintenance services within the smoking breakroom; and

1 (iv) The smoking breakroom shall be separated from the rest of the place of
2 employment or public place, and from any other adjacent or connected place of employment or
3 public place, by solid walls, floors, ceiling, and doors equipped with automatic closing
4 mechanisms; and

5 (v) The smoking breakroom shall be at negative air pressure with respect to
6 the rest of the place of employment or public place, and from any other adjacent or connected
7 place of employment or public place, so as to prohibit the flow of air from the smoking
8 breakroom into the place of employment or public place; and

9 (vi) The smoking breakroom's air shall be immediately exhausted to the
10 outside of the building by an exhaust fan rather than being recirculated within the smoking
11 breakroom or any place of employment or public place; and

12 (vii) No person under the age of eighteen shall be allowed to enter the
13 smoking breakroom.

14 (4) In a single smoking room within any place of employment or public place,
15 provided that it meets the following requirements:

16 (i) The smoking room shall be separated from the rest of the place of
17 employment or public place, from any other adjacent or connected place of employment or public
18 place, by solid walls, floors, ceiling, and doors equipped with automatic closing mechanisms; and

19 (ii) The smoking room shall be at negative pressure with respect to any
20 adjacent or connected place of employment or public place to prohibit the flow of air from the
21 smoking room into the nonsmoking portion of the place of employment or public place; and

1 (iii) The smoking room's air shall be immediately exhausted to the outside of
2 the building by an exhaust fan rather than being recirculated within the smoking room or any
3 place of employment or public place; and

4 (iv) The maximum size of the smoking room shall be reasonably proportionate
5 to the preference of the users of the place of employment or public place; and

6 (v) Any service or amenity which the place of employment or public place
7 chooses to provide to the public or employees within the smoking room shall also be available to
8 the public or employees in the rest of the place of employment or public place. Service or
9 amenity shall include, but is not limited to television, musical entertainment, and seating; and

10 (vi) No member of the public nor any employee shall be required to enter the
11 smoking room in order to access common areas of the place of employment or public place,
12 including but not limited to, hallways, restrooms, lobbies, and waiting rooms; and

13 (vii) No person under the age of eighteen shall be allowed to enter the
14 smoking room.

15 (5) Smoking by an actor or actress as part of the character role in a theatrical
16 production, if smoking is an integral part of the story.

17 (6) In a smoke shop, provided that it meets the following requirements:

18 (i) The smoke shop shall be separated from any other place of employment or
19 public place by solid walls, floors, ceiling, and doors equipped with automatic closing
20 mechanisms; and

21 (ii) The smoke shop shall be at negative pressure with respect to any adjacent
22 or connected place of employment or public place to prohibit the flow of air from the smoke shop
23 into another place of employment or public place; and

1 (iii) The smoke shop are shall be immediately exhausted to the outside of the
2 building by an exhaust fan rather than being recirculated within the smoke shop; and

3 (iv) No person under the age of eighteen shall be allowed to enter the smoke
4 shop; and

5 (v) The smoke shop shall not sell or serve alcoholic beverages.

6 (7) In a bar, provided that it meets the following requirements:

7 ~~(i) The licensed manager of the bar shall have placed on file in the office of~~
8 ~~the City Clerk an affidavit verifying that the gross receipts from the sale and service of food~~
9 ~~constitute less than 60% of gross receipts from all business activity conducted on the premises.~~
10 ~~If the proprietor of the bar is a different person than the licensed manager, the proprietor shall~~
11 ~~also have the duty to file the same affidavit; and~~

12 ~~_____ (ii) The affidavit(s) shall be renewed at least annually, upon the earlier of the~~
13 ~~filing of an application for renewal of the liquor license for the bar, or the filing of an application~~
14 ~~for designation of a new manager for the bar; and~~

15 (iii i) All employees shall have been informed of the fact that smoking is
16 permitted on the premises and that the employee will be exposed to the health risks associated
17 with smoking whether or not the employee smokes.

18 (~~iv~~ ii) No person under the age of eighteen shall be allowed to enter a bar.

19 (b) The proprietor shall have an affirmative defense to any violation of this section if the
20 proprietor (1) verbally requested a person to refrain from smoking within a public place or place
21 of employment where smoking is prohibited; and (2) took every reasonable step to prohibit the
22 person from smoking. "Reasonable step" shall not require the physical ejection of a person by the
23 proprietor from the place of employment or public place.

(c) This Chapter shall not be interpreted or construed to permit smoking where smoking is otherwise restricted by other applicable laws.

Section 5. That Section 8.48.180 of the Lincoln Municipal Code be amended to read as follows:

8.48.180 Signs Required; Requirements.

(a) If smoking is not allowed by this Chapter and/or by the proprietor, the proprietor shall post at least one sign at all entrances of the place of employment or public place used by employee(s) or the public containing only the international no smoking symbol or only the words “no smoking,” or only the words “no smoking under penalty of law.”

(b) If smoking is allowed in conformance with this Chapter and by the proprietor within designated areas, the proprietor shall post at least one permanent sign at all entrances of the place of employment or public place used by employee(s) or the public containing only the words “no smoking except in designated area under penalty of law,” and

(1) Each guestroom or suite designated as an indoor area where smoking is allowed shall have a permanent sign posted which indicates smoking is allowed within the guestroom or suite. The sign shall include the words “smoking allowed.” Each letter shall be one inch or larger in size. There shall be a separately posted sign on each entrance of the guestroom or suite.

(2) Each indoor area where research is being conducted, pursuant to Section 8.48.170(2), that requires a person to smoke, shall have a temporary sign posted on all entrances used by employee(s) or the public indicating that smoking is being allowed for the purposes of the research.

(3) Each smoking breakroom, designated pursuant to Section 8.48.170(3), and each smoking room designated, pursuant of Section 8.48.170(4) shall have a sign posted indicating

1 that smoking is allowed within the smoking breakroom or smoking room. The signs shall
2 include the words “smoking allowed.” Each letter shall be one inch or larger in size. There shall
3 be a separately posted sign on each entrance to the smoking breakroom or smoking room.

4 (c) Each indoor area where an actor or actress is to be smoking, pursuant to Section
5 8.48.170(5), shall have a temporary sign posted on all entrances used by employee(s) or the
6 public indicating that the actor or actress will be smoking as part of the theatrical production.

7 (d) If smoking is allowed in conformance with this Chapter and by the proprietor in a bar
8 or smoke shop in the entirety, the proprietor shall post at least one permanent sign at all entrances
9 of the bar or smoke shop used by employee(s) or the public containing only the words “smoking
10 allowed in entire establishment.”

11 ~~(c)~~ (e) Proprietors shall conspicuously post or display required signs so that the signs are
12 readily viewable by employee(s) and the public.

13 (f) In areas where a Proprietor is allowing smoking pursuant to this Chapter, signs shall
14 be posted indicating that minors are not allowed in areas where smoking is allowed. The
15 proprietor shall post at least one permanent sign at all entrances to areas where smoking is
16 allowed containing only the words “no person under the age of eighteen allowed under penalty of
17 law”.

18 (g) All signs required by this section must be approved by the Health Department.

19 Section 6. That Chapter 8.48 of the Lincoln Municipal Code be amended by adding
20 a new section numbered 8.48.182 to read as follows:

1 **8.48.182 Permit.**

2 (a) An application for a permit to allow smoking pursuant to Section 8.48.170 shall be
3 submitted to the Health Director on forms provided by the Health Director. Each application
4 shall include:

5 (1) The proprietor's full name, mailing address, phone number, and a statement
6 identifying the proprietor;

7 (2) If the proprietor is a partnership, the name, mailing address and phone number of
8 each partner;

9 (3) The place of employment or public place's name, location, a description of the
10 indoor area to be included in the permit, and a description of the services to be provided or
11 products sold;

12 (4) A to scale drawing of all pertinent aspects of the indoor area where smoking is
13 to be allowed, including:

14 (i) For guestrooms or suites to be designated as smoking, the drawing must
15 show which guestrooms or suites will be smoking and which will be non-smoking. A list of
16 room numbers for each category (non-smoking and smoking) shall be provided.

17 (ii) For all other indoor areas where smoking is to be allowed, the drawing
18 shall include a detailed description of the ventilation system and the physical separation provided
19 by walls, floors, ceiling and doors, where required by this Chapter.

20 (5) The signature of the proprietor;

21 (6) A detailed description of how the preference of the users was determined, where
22 required by this Chapter;

23 (7) Permit fees; and

1 (8) Such other pertinent information to be determined by the Health Director.

2 (b) If more than one place of employment or public place is owned by a proprietor, a
3 separate application and fee shall be required for each location of the place of employment or
4 public place.

5 (c) The fees for permit(s) shall be as follows:

6 (1) Plan Review: Smoking Rooms, Smoking Breakrooms, Bars, Smoke Shops

7 <u>Plan Review</u>	<u>\$200/area or room</u>
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8 <u>(2) Permit Fee: Per area or room</u>	<u>Initial</u>	<u>Renewal</u>
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9 <u>Smoking room or Smoking Breakroom</u>	<u>\$300</u>	<u>\$200</u>
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10 <u>Bar or Smoke Shop</u>	<u>\$300</u>	<u>\$200</u>
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11 <u>(3) Permit Fee: Smoking guestrooms or suites</u>	<u>\$300</u>	<u>\$200</u>
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12 (4) Any new permit issued after the thirtieth of April of each calendar year shall pay
13 seventy percent (70%) of the yearly permit fee, the fee for plan review shall not be prorated.

14 Renewal of permits shall be as required in this Chapter. The fees shall be payable to the Lincoln-
15 Lancaster County Health Department. The Health Director shall deposit the fees at the City
16 Treasurer's Office. The City Treasurer shall credit the fees to the Health Fund.

17 (5) A proprietor who fails to renew the permit before it expires, but within thirty
18 days of the date of expiration shall pay a late fee of \$100.00, in addition to the renewal fee.

19 (6) A proprietor who fails to renew the permit before it expires and fails to renew
20 the permit within thirty days from the date of expiration shall pay a late fee of \$200.00, in
21 addition to the renewal fee.

22 (7) It shall be unlawful for a proprietor to continue to allow smoking within the
23 place of employment or public place when the proprietor fails to renew the permit before it

1 expires. The proprietor would be operating without a valid permit to allow smoking, and the
2 place of employment or public place shall be subject to closure or any other appropriate
3 enforcement action determined by the Health Director.

4 (d) Upon receipt of a complete application for a new permit, completion of the plan
5 review, or construction, whichever is later, the Health Director shall make an inspection of the
6 proprietor's place of employment or public place to determine if the place of employment or
7 public place complies with the provisions of the Chapter and any other applicable law or
8 standard.

9 (1) If the results of an application and inspection of a place of employment or public
10 place comply with the provisions of this Chapter, a permit to allow smoking pursuant to Section
11 8.48.170 shall be issued within a reasonable time not to exceed fourteen days.

12 (2) Upon receipt of an application for a permit renewal and the applicable fees, the
13 Health Director may issue the permit without conducting an inspection.

14 (3) A permit issued hereunder is strictly limited to the proprietor and the place of
15 employment or public place specified in the permit.

16 (4) A permit shall be non-transferable from one proprietor to another or from one
17 place of employment or public place to another.

18 (5) Any change of proprietor or location of the place of employment or public place
19 shall require a new application, with the payment of fees therefor.

20 (6) The Health Director may refuse to issue or may suspend or revoke a permit if the
21 proprietor:

22 (i) Has been convicted in this or any other state of a crime related to allowing
23 smoking without a permit or a Clean Indoor Air Act.

1 (ii) Has violated provisions of this Chapter which are determined by the
2 Health Director to pose immediate health risk to the proprietor, employees, or the public.

3 (e) All permits granted under the provisions of this Chapter shall expire on the thirty-first
4 day of October following the date of their issuance, unless revoked prior thereto as provided in
5 this Chapter.

6 Section 7. That Chapter 8.48 of the Lincoln Municipal Code be amended by adding
7 a new section numbered 8.48.184 to read as follows:

8 **8.48.184 Inspection.**

9 (a) The Health Director shall conduct an inspection of each place of employment or
10 public place before the new permit is issued.

11 (b) The Health Director shall conduct periodic inspections of each permitted place of
12 employment or public place.

13 (c) A proprietor shall permit the Health Director to inspect at any reasonable time for the
14 purpose of determining compliance with the provisions of this Chapter.

15 (d) The Health Director shall record the inspection findings on an inspection report. The
16 Health Director shall furnish the original inspection report to the proprietor.

17 (e) The inspection report shall:

18 (1) Set forth specific conditions found; and

19 (2) Establish a specific and reasonable period of time for correction of violations of
20 the provisions of this Chapter, if any; and

21 (3) State that failure to correct the violations within the period of time specified may
22 result in immediate suspension or revocation of the permit and prosecution for violation of this
23 Chapter; and

1 (4) State that the proprietor may request a hearing before the Health Director upon
2 such inspection findings by filing a written request with the Health Director within fourteen (14)
3 days of the inspection.

4 (f) A warning notice may be issued for violations when the Health Director determines
5 there is an imminent health risk. Such warning notice shall:

6 (1) Set forth specific conditions found; and

7 (2) Establish a specified and reasonable period of time for correction of such
8 violations; and

9 (3) State that failure to comply with the warning notice may result in immediate
10 suspension or revocation of the permit and prosecution for violation of this Chapter; and

11 (4) State that proprietor may request a hearing before the Health Director upon such
12 inspection findings and warning notice by filing a written request with the Health Director.

13 (g) After the time period given for correction in the inspection report or warning notice,
14 the Health Director shall reinspect the place of employment or public place to determine
15 compliance.

16 (h) The completed inspection report form and the warning notice are public documents
17 that shall be made available for public disclosure to any person who requests it according to law.

18 Section 8. That Chapter 8.48 of the Lincoln Municipal Code be amended by adding
19 a new section numbered 8.48.186 to read as follows:

20 **8.48.186 Permit: Suspension, Revocation, and Notice.**

21 (a) It shall be a condition of any permit issued under this Chapter that it may be
22 suspended or revoked at any time by the Health Director for the violation of the statutes of the
23 State of Nebraska or any of the provisions of this Chapter or ordinances of the City of Lincoln by

1 causing an immediate and substantial hazard to the public health. Any permits granted under this
2 Chapter shall be subject to suspension or revocation in the following manner:

3 (1) The Health Director shall notify the proprietor as provided in this Chapter.

4 (2) The Health Director may suspend the permit for an appropriate period of time
5 not to exceed ninety days.

6 (3) The suspension or revocation shall be effective immediately upon notice.

7 (4) The proprietor shall have a right to a hearing in which the Health Director shall
8 conduct in accordance with this Chapter.

9 (5) It shall be unlawful for a proprietor to continue to allow smoking within the
10 place of employment or public place after the proprietor receives notice of suspension or
11 revocation. The proprietor would be operating without a valid permit to allow smoking, and the
12 place of employment or public place shall be subject to closure or any other appropriate
13 enforcement action determined by the Health Director.

14 (6) Actions for reinstatement, hearing, or appeal shall not stay or delay the
15 suspension or revocation in any manner.

16 (b) Any proprietor whose permit has been suspended may apply for reinstatement of such
17 permit. The application shall provide the same information as for a new permit and shall also
18 include a statement signed by the proprietor that the conditions causing suspension of the permit
19 have been corrected. Any proprietor eligible for reinstatement shall pay a reinstatement fee of
20 \$150.00 in addition to any other applicable fees. The Health Director shall not reinstate the
21 permit until the reinstatement fee is paid.

22 (c) The Health Director shall inspect or review the application as for a new permit,
23 except, the Health Director shall make the inspection within three days after receiving the

1 application for reinstatement and the reinstatement fee. The Health Director shall make a
2 determination if a permit shall be reinstated within five days after receiving the application for
3 reinstatement and the reinstatement fee.

4 (d) The Health Director shall reissue or reinstate the permit if the conditions causing
5 suspension of the permit have been corrected and upon payment of any reinstatement fee
6 provided for in this Chapter.

7 (e) Any proprietor whose permit has been revoked by the Health Director will qualify for
8 reinstatement. The proprietor must make an application for a new permit and cannot obtain a
9 new permit until at least ninety days have passed since the date of the revocation notice.

10 (f) The Health Director may serve notice as follows:

11 (1) By personal service to the proprietor; or

12 (2) By certified mail, postage prepaid, return receipt requested to the proprietor's
13 last known address.

14 (g) The person making personal service may provide a written declaration under penalty
15 of perjury identifying the person served and the time, date, and manner of service as proof of
16 service.

17 (h) If the service on a proprietor is to a person other than the proprietor, the Health
18 Director may send a copy of the notice to the proprietor by regular mail. The copy is not required
19 as part of the notice, and receipt of the copy does not affect the notice.

20 Section 9. That Chapter 8.48 of the Lincoln Municipal Code be amended by adding
21 a new section numbered 8.48.188 to read as follows:

22 **8.48.188 Enforcement Hearing.**

23 (a) The Health Director shall conduct a hearing no later than:

1 (1) Three days after a request for a hearing after a suspension or revocation.

2 (2) Fourteen days after any other request.

3 (b) The Health Director may appoint a suitable hearing officer to hear the matter. Such
4 hearing officer shall make recommendations based on the evidence adduced at the hearing for the
5 Health Director's final determination of the matter.

6 (c) The hearing need not be conducted according to the technical rules relating to
7 evidence and witnesses. The person requesting the hearing and the Health Director may:

8 (1) Call and examine witnesses on any matter relevant to the issues of the hearing;

9 (2) Introduce documentary and physical evidence;

10 (3) Cross examine opposing witnesses on any matter relevant to the issues of the
11 hearing; and

12 (4) Rebut evidence.

13 (d) The Health Director may uphold, reverse, or modify the findings of the hearing
14 officer. The Health Director may also take other reasonable actions as the Health Director may
15 determine proper in relation to the request.

16 (e) The Health Director shall make a final determination within ten days after the
17 hearing.

18 (f) The Health Director's decision shall be final and binding upon the City and upon the
19 person making the request.

20 (g) Appeals:

21 (1) If the Health Director denies any application or fails or refuses to issue a permit
22 under this Chapter within forty-five days from the date of application, such decision may be
23 appealed to the district court as provided for by state law.

1 (2) Any proprietor aggrieved by a final decision of the Health Director in the
2 administration or enforcement of this Chapter may appeal such decision to the district court as
3 provided by state law.

4 Section 10. That Section 8.48.190 of the Lincoln Municipal Code be amended to
5 read as follows:

6 **8.48.190 Enforcement.**

7 The Health Director and law enforcement agencies are hereby authorized to inspect a
8 place of employment or public place, including all accounting records of the place of
9 employment or public place, at any reasonable time to determine compliance with this Chapter.

10 Section 11. That Sections 8.48.020, 8.48.170, 8.48.180 and 8.48.190 of the Lincoln
11 Municipal Code as hitherto existing be and the same are hereby repealed.

12 Section 12. That the operative date of this ordinance shall be July 1, 2004.

13 Section 13. That this ordinance shall take effect and be in force from and after its
14 passage and publication according to law.

Introduced by:

Approved as to Form & Legality:

City Attorney

Approved this ____ day of _____, 2004:

Mayor